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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/736,330	12/15/2003	David L. Malametz	H0002511	3719

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EXAMINER

CHAPMAN JR, JOHN E

ART UNIT PAPER NUMBER

2856

DATE MAILED: 05/20/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

10/736,330

Applicant(s)

MALAMETZ, DAVID L.

Examiner

John E. Chapman

Art Unit

2856

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 12 April 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1,4,5 and 21-34 is/are pending in the application.
- 4a) Of the above claim(s) 23,24 and 32-34 is/are withdrawn from consideration.
- 5) ☒ Claim(s) 1,4 and 5 is/are allowed.
- 6) ☒ Claim(s) 21 and 29-31 is/are rejected.
- 7) ☒ Claim(s) 22 and 25-28 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

## Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- 1) ☐ Certified copies of the priority documents have been received.
  - 2) ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - 3) ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

## Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_

### DETAILED ACTION

1. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

2. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

3. Claims 29-31 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

The preamble of claim 29 recites "a serpentine flexure" but the body of the claim recites only a pair of spaced-apart elongated flexures. It is not clear that a pair of spaced-apart elongated flexures comprises "a serpentine flexure." It would appear that more than two elongated flexures are required to form "a serpentine flexure." Hence, there is insufficient structure recited in claim 29 to support "a serpentine flexure."

4. Claims 29-31, as best understood, are rejected under 35 U.S.C. 102(b) as being clearly anticipated by either Howe et al. or Sakai et al. (published on Oct. 4, 2001).

Howe et al. discloses a pair of elongated flexures 42 and 46, wherein a small mass 52 extends a part of the distance between the pair of elongated flexures. Sakai et al. discloses a micro-machined electromechanical sensor (MEMS) device comprising a pair of spaced-apart elongated flexures 22 in Fig. 2 with a small mass 26 extending part of a distance between the pair of elongated flexures.

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claim 21, 29 and 30 are rejected under 35 U.S.C. 103(a) as being unpatentable over Sakai et al. in view of Schmiesing et al.

Sakai et al. discloses a micro-machined electromechanical sensor (MEMS) device comprising a serpentine flexure 220 in Fig. 10. The only difference between the claimed invention and the prior art consists in providing a small mass on the flexure 220. Schmiesing et al. provides a small mass 141 on the beam 140 in order to limit the mobility of the beam. It would have been obvious to one of ordinary skill in the art to provide the small mass 141 of Schmiesing et al. on the flexure 120 of Sakai et al. in order to limit the mobility of the flexure.

7. Claims 22 and 25-28 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

8. Claims 23, 24 and 32-34 are withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected invention, there being no allowable generic or linking claim. Election was made **without** traverse in the reply filed on April 12, 2005.

9. Claims 1, 4, and 5 are allowed.

10. Linking claim 4 is allowed. Since the restriction requirement between inventions I and II, as set forth in the Office action mailed on January 28, 2005, was conditioned on the nonallowance of the linking claim, **the restriction requirement as to the linked inventions is hereby withdrawn**. Claims 6-8, which depended from the allowable linking claim, previously withdrawn from consideration as a result of the restriction requirement, were canceled by applicant in the reply filed on April 12, 2005. The canceled, nonelected claims may be reinstated by applicant if submitted in a timely filed amendment in reply to this action. Upon entry of the amendment, such amended claims will be examined for patentability under 37 CFR 1.104.

In view of the withdrawal of the restriction requirement as to the linked inventions, applicant(s) are advised that if any claim(s) depending from or including all the limitations of the allowable linking claim(s) be presented in a continuation or divisional application, such claims may be subject to provisional statutory and/or nonstatutory double patenting rejections over the claims of the instant application. Once the restriction requirement is withdrawn, the provisions of 35 U.S.C. 121 are no longer applicable. See *In re Ziegler*, 44 F.2d 1211, 1215, 170 USPQ 129, 131-32 (CCPA 1971). See also MPEP § 804.01.

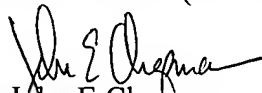
11. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

Art Unit: 2856

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

12. Any inquiry concerning this communication or earlier communications from the examiner should be directed to John E. Chapman whose telephone number is (571) 272-2191. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Hezron Williams can be reached on (571) 272-2208. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

  
John E Chapman  
Primary Examiner  
Art Unit 2856